

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 32-35 are pending in the present application, Claims 32-35 having been amended, and Claims 1-31 having been previously canceled. Support for the claim amendments is found in the specification, and no new matter is added and no new search is required.

In the outstanding Office Action, Claims 32-35 were rejected under the judicially created doctrine of obviousness-type double patenting as unpatentable over the Claims 1-4 of U.S. Patent No. 6,798,976 in view of Yamuchi et al. (U.S. Patent No. 6,088,507).

Applicant respectfully submits that Claims 32-35 are patentably distinct from the claims of U.S. Patent No. 6,798,976.

With respect to the official notice taken in the outstanding Office Action, the Examiner may take official notice of facts outside of the record which are capable of instant and unquestionable demonstration as being "well-known" in the art. *In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420 (CCPA 1970). Applicants respectfully traverse those grounds for rejection relying on official notice. Applicants do not consider the features for which Official Notice were taken to be "of such notorious character that official notice can be taken."

However, to expedite progress toward allowance, a Terminal Disclaimer is filed herewith. Thus, Applicant submits the outstanding rejections of the claims have been overcome.

The filing of a Terminal Disclaimer to obviate a rejection based on nonstatutory double patenting is not an admission of the propriety of the rejection. The "filing of a Terminal Disclaimer simply serves the statutory function of removing the rejection of double

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patenting, and raises neither a presumption nor estoppel on the merits of the rejection." Quad Environmental Technologies Corp. v. Union Sanitary District, 946 F.2d 870, 20 U.S.P.Q.2d 1392 (Fed. Cir. 1991). Accordingly, Applicants filing of the attached disclaimer is provided for facilitating a timely resolution to prosecution only, and should not be interpreted as an admission as to the merits of the obviated rejection.

Accordingly, in view of the present amendment and the previous discussion, no further issues are believed to be outstanding and the present application is believed to be in condition for formal allowance. An early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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